IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRP.No. 974 of 2005()

AS.42/2002 of SUB COURT, PALA
OS.197/2000 of MUNSIFF COURT, PALA

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PETITIONER: APPELLANT/PLAINTIFF:

THE PERINGOTTUKARA FINANCE AND INVESTMENTS CO.LTD.(NAME CHANGES AS PERINGOTTUKARA CHITS LTD. W.E.F. 12-12-2001) A BANKING COMPANY CONSTITUTED AND FUNCTIONING UNDER THE COMPANIES ACT,1956 HAVING ITS REGD.OFFICE AT ANTHIKADU AND BRANCHES AT PALAI,REP.BY ITS MANAGING DIRECTOR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENT: RESPONDENT/DEFENDANT:

MATHEW JOSEPH,
PUTHUPPALLIL HOUSE, NARIANGANAM P.O.,
BHARANANGANAM VILLAGE, MEENACHIL TALUK.

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

PIUS C. KURIAKOSE, J.

CRP. No. 974 OF 2005

Dated this the 14th day of August, 2007

O R D E R

In this civil revision petition under section 115 of the Code of Civil Procedure the petitioner who was the plaintiff before the trial court challenges the judgment and decree of the learned Subordinate Judge's Court, Palai dismissing the appeal which they had preferred against the judgment and decree of the trial court dismissing the suit. The parties will be referred to by their statai and ranks in the trial court for convenience. According to the plaintiff, they are a banking company and the respondent-defendant availed a loan from them and in discharge of that liability issued cheque for Rs.1,34,000/- in their favour and on presentation of the cheque it was dishonoured by the drawee bank with an endorsement that funds are insufficient. A suit was instituted for recovery of the amounts covered by the cheque on the reason that in spite of issuance of statutory notice the respondent had not chosen to discharge the debt.

2. In the written statement filed by the respondent it was contended that the suit is not maintainable and the issuance of cheque was denied. Loan transaction was admitted and it was claimed that the entire amount was repaid by various instalments in July 1998

itself. According to the defendant he had handed over a blank cheque on 3-5-1995 to the plaintiff as demanded by the plaintiff on the understanding that the cheque will be retained as security only. It is violating the understanding that the plaintiff filled up the cheque and presented it for encashment. It was also contended that the suit is barred by limitation. The learned Munsiff formulated mainly two issues, first one being whether the suit is barred by limitation and second one is regarding the entitlement of the petitioner for decree to realize the amount. Evidence on the side of the plaintiff consisted of Exts.A1 to A10 documents and oral testimony of PW-1, its branch manager. On the side of the defendant the same consisted of oral testimony of DW-1 and documents Exts. B1 and B2. Learned Munsiff on an evaluation of the evidence found the issue regarding the limitation in favour of the plaintiff. But coming to the issue regarding the merits of the claim it was found that there are material discrepancies in the plaintiff's case and that PW-1 was unable to explain those material discrepancies. It was concluded that the plaintiff was unable to establish the due execution and issuance of the cheque for valuable consideration. Accordingly the suit was dismissed. In the appeal, the lower appellate court would re-appreciate the

evidence and concurred with all the findings of the trial court.

3. Before me, Sri.N.M.Madhu, counsel for the petitioner and Sri.Shaji Thomas Porkkalathil have addressed arguments in opposition/support of the judgments of the courts below. Placing reliance on the judgments of this court in General Auto Sales v. Vijayalakshmi, 2005(1) KLT 478; Thomas v. Thomas, 2005(1) KLT 297 and Ramakrishnan v. Parthasaradhy, 2003(2) KLT 613 it was argued by Mr.Madhu that the date of issuance of cheque was contradictory to each other. While deciding the question of issuance of cheque and the second question of the respondent's liability the court took contradictory view. Expatiating the argument Mr.Madhu submitted that it has been held by the court below that there is no bar of limitation on the reason that Ext.A6 cheque was issued on 14-2-2000, while on the issue on merits it has been held that A6 is not a cheque issued on 14-2-2000. The counsel argued that the case of the respondent-defendant was one of discharge. In the absence of cogent evidence to substantiate the case of discharge it is inevitable that the suit is decreed at least relying on the original transaction between the parties which was not in dispute. Counsel argued that the issuance of cheque had been admitted. The burden was on the respondent to

rebut the presumption regarding consideration which is available under section 118 of the C.P.C. Some minor aberrations in the oral testimony of PW-1 has been highlighted by the appellate court completely ignoring the truth which emerges from the documentary evidence which was available on record.

3. Appealing submissions of Mr. Madhu notwithstanding I am unable to agree that the judgments of the courts below are vitiated by jurisdictional errors. The courts below have concurrently found on facts after appreciating evidence which was actually on record that the claim of the plaintiff that the defendant having issued the cheque for valid consideration was not established on the evidence adduced. Having regard to the contours of this Court's revisional jurisdiction under section 115 there is no justification in interfering with the judgments and decrees of the courts below. There is no jurisdictional infirmity vitiating the orders impugned. The challenge will fail and the CRP will stand dismissed.

(PIUS C.KURIAKOSE, JUDGE)

ksv/19208.